

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

August 24, 2022

Lyle W. Cayce
Clerk

No. 22-50004

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

CARLOS BLADIMIR RODRIGUEZ-JUAREZ,

Defendant—Appellant,

CONSOLIDATED WITH

No. 22-50011

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

CARLOS RODRIGUEZ-JUAREZ,

Defendant—Appellant.

No. 22-50004
c/w No. 22-50011

Appeals from the United States District Court
for the Western District of Texas
USDC Nos. 4:19-CR-458-1, 4:21-CR-783-1

Before KING, HIGGINSON, and WILLETT, *Circuit Judges*.

PER CURIAM:*

Carlos Rodriguez-Juarez appeals (1) his conviction and sentence under 8 U.S.C. § 1326(a) and (b)(2) for illegal reentry into the United States, and (2) the judgment revoking his term of supervised release for a prior offense. The latter challenge is unbriefed and therefore abandoned. *See United States v. Reagan*, 596 F.3d 251, 254–55 (5th Cir. 2010).

As for the underlying conviction and sentence, Rodriguez-Juarez contends for the first time on appeal that § 1326(b) is unconstitutional because it permits a sentence above the otherwise-applicable statutory maximum in § 1326(a) based on facts that were neither alleged in the indictment nor found by a jury beyond a reasonable doubt. Rodriguez-Juarez acknowledges this argument is foreclosed by *Almendarez-Torres v. United States*, 523 U.S. 224 (1998). *See also United States v. Pervis*, 937 F.3d 546, 553–54 (5th Cir. 2019). He nevertheless seeks to preserve it for possible Supreme Court review and has filed an unopposed motion for summary disposition.

As Rodriguez-Juarez’s position “is clearly right as a matter of law so that there can be no substantial question as to the outcome of the case,”

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

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Groendyke Transp., Inc. v. Davis, 406 F.2d 1158, 1162 (5th Cir. 1969),
summary affirmance is proper.

Rodriguez-Juarez's unopposed motion for summary affirmance is
GRANTED, and the district court's judgments are AFFIRMED.